

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WESTLEY BAUTISTA,

Plaintiff,

**STIPULATION AND
ORDER OF DISMISSAL**

-against-

16 CV 2326 (GHW)

THE CITY OF NEW YORK, et al.,

Defendants.

----- X

WHEREAS, the parties have reached a settlement agreement and now desire to resolve the remaining issues raised in this litigation, without further proceedings and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that

1. The above-referenced action is hereby dismissed with prejudice; and

2. Notwithstanding the dismissal of this action in accordance with this agreement, the District Court shall continue to maintain jurisdiction over this action for the purpose of enforcing the terms of the settlement agreement reached between the parties and set forth in the Stipulation of Settlement executed by the parties in this matter.

Dated: New York, New York
2/2, 2016

305 BROADWAY, 14TH FLOOR
Attorneys for Plaintiff
305 Broadway, 14th Floor
New York, NY, 10007

By: 
Gabriel Harvis
Attorney for Plaintiff

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendant City of New York
100 Church Street, 3rd Floor
New York, New York 10007

By: 
Richard Bahrenburg
Assistant Corporation Counsel

SO ORDERED:

HON. GREGORY H WOODS
UNITED STATES DISTRICT JUDGE

Dated: _____, 2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

WESTLEY BAUTISTA,

Plaintiff,

**STIPULATION OF
SETTLEMENT**

-against-

16 CV 2326 (GHW)

THE CITY OF NEW YORK, et al.,

Defendants.

-----x

WHEREAS, plaintiff commenced this action by filing a complaint on or about March 29, 2016, and an Amended Complaint on or about July 11, 2016, alleging that the defendants violated plaintiff's federal civil and state common law rights; and

WHEREAS, defendants City of New York and C.O. April Powell have denied any and all liability arising out of plaintiff's allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

WHEREAS, plaintiff has authorized his counsel to settle this matter on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees except as specified in paragraph "2" below.

2. Defendant City of New York hereby agrees to pay plaintiff Westley Bautista the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars in full satisfaction of all claims, including claims for costs, expenses and attorneys' fees. In consideration for the payment of this sum, plaintiff agrees to dismissal of all the claims against defendants City of New York and C.O. April Powell and to release defendants City and C.O. April Powell; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiff's civil rights from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiff shall execute and deliver to the City of New York's attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph "2" above and an Affidavit of Status of Liens. Prior to tendering the requisite documents to effect this settlement, Medicare-recipient plaintiffs must obtain and submit a final demand letter from Medicare for the reimbursement of any conditional payments made by Medicare for any injury or condition that is the subject of this lawsuit. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26.

4. Nothing contained herein shall be deemed to be an admission by the defendant that it has in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. This stipulation shall not be

admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms of this agreement.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. Plaintiff agrees to hold harmless defendant regarding any liens or past and/or future Medicare payments, presently known or unknown, in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendant reserves the right to issue a multiparty settlement check naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

7. This Stipulation of Settlement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation of Settlement regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

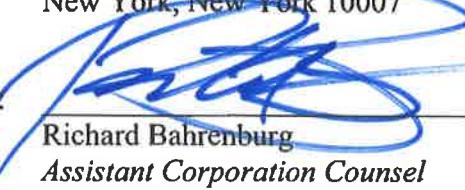
Dated: New York, New York
2/2, 2016

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By: 

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Richard Bahrenburg
Assistant Corporation Counsel

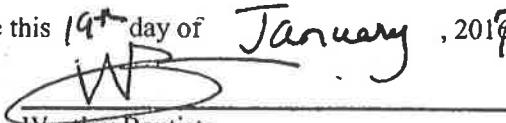
GENERAL RELEASE

KNOW THAT I, WESTLEY BAUTISTA, date of birth [REDACTED], Social Security No. [REDACTED], plaintiff in the action entitled Westley Bautista v. City of New York, et al., 16 CV 2326 (GHW), as "RELEASOR," in consideration of the payment of One Hundred Fifty Thousand (\$150,000.00) DOLLARS to me by the City of New York, do hereby release and discharge defendants City and C.O. Powell; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, collectively the "RELEASEES," from any and all liability, claims, or rights of action alleging a violation of my civil rights and any and all related state law claims from the beginning of the world to the date of this General Release, including claims for costs, expenses, and attorneys' fees.

IN FURTHER CONSIDERATION of the payment set forth above, RELEASOR hereby waives, releases and forever discharges RELEASEES from any and all claims, known or unknown, past and/or future conditional payments, arising out of the RELEASOR'S Medicare eligibility and receipt of Medicare benefits related to the claimed injury in this matter and/or arising out of the provision of primary payment (or appropriate reimbursement) including causes of action pursuant to 42 U.S.C. §1395y(b)(3)A of the Medicare, Medicaid and SCHIP Extension Act of 2007.

**THIS RELEASE MAY NOT BE CHANGED ORALLY. THE UNDERSIGNED HAS READ
THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.**

IN WITNESS WHEREOF, I have executed this 19th day of January, 2018.


Westley Bautista

STATE OF New York, COUNTY OF Franklin SS.:

On January 19, 2018 before me personally came Westley Bautista to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that she/he executed the same.

Carolyn St Denis
NOTARY PUBLIC

CAROLYN ST DENIS
NOTARY PUBLIC. STATE OF NEW YORK
QUALIFIED IN FRANKLIN COUNTY
NO. 01ST6049154
COMMISSION EXPIRES OCT 10, 2018